

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

HENRY BETHUNE, #500130,

Plaintiff,

Case No. 08-14412

Hon. Marianne O. Battani

v.

Magistrate Judge R. Steven Whalen

MARY BERGHUIS, et al.,

Defendants.

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**ORDER DENYING MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiff filed a notice of appeal on January 5, 2010. On March 24, 2010, Plaintiff filed his Motion for a Preliminary Injunction FRCivP 65(a) and Notice to Adverse Party FRCivP 65(a)(1) (Doc. No. 35). In his motion, Plaintiff seeks to “prevent further suffering of irreparable harm while he awaits the final disposition of his case on appeal of right in the United States Court of Appeals for the Sixth Circuit. . . .” Motion at 1.

As applicable here, Rule 8 provides that a party asking the court of appeals for a stay or injunction pending appeal “must ordinarily move first in the district court” for that relief. FED. R. APP. P. 8(a)(1)(C). The rules of appellate procedure only govern the procedure in the courts of appeals. See FED. R. APP. P. 1(a) (1). Where the rules “provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.” FED. R. APP. P. 1(a)(2).

Here, the Court construes Petitioner's emergency motion as a motion pursuant to Fed. R. Civ. P. 62(c), which provides, “While an appeal is pending from an interlocutory

order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." FED. R. CIV. P. 62(c).

In his motion, Plaintiff asks this Court to enjoin Defendants "from transferring Plaintiff from his present facility of confinement, so as not to hin[d]er Plaintiff's appeal of right." Doc. No. 35 at 1. Because an inmate possesses no constitutional right to prevent transfer or to remain incarcerated in the facility of his choice, see Olim v. Wakinekona, 461 U.S. 238, 245 (1983), Plaintiff's motion is **DENIED**.

**IT IS SO ORDERED.**

s/Marianne O. Battani  
MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATE: June 8, 2010

### **CERTIFICATE OF SERVICE**

Copies of this Order were mailed and/or e-filed to Plaintiff and counsel of record on this date.

s/Bernadette M. Thebolt  
Case Manager